

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONTE BELL,

Plaintiff,

V.

NATIONAL CREDIT SERVICES INC.

Defendant.

CASE NO. 2:19-cv-01727 RAJ-BAT

REPORT AND RECOMMENDATION

Before the Court is Defendant National Credit Systems, Inc.’s (“NCS”) “Motion for Attorneys’ Fees, Costs and Sanctions” pursuant to Fed. R. Civ. P. 11. Dkt. 82. NCS argues that Plaintiff Donte Bell’s Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b) (“FCRA”) claim against NCS is frivolous and Mr. Bell knew this before he filed his lawsuit. NCS seeks not only its attorney fees and costs, but dismissal of Mr. Bell’s Second Amended Complaint (Dkt. 59) in its entirety, which also includes claims brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, and the Revised Code of Washington’s Unfair Business Practices –Consumer Protection Act Chapter 19.86 (“WCPA”). Mr. Bell opposes the motion and seeks attorney’s fees and costs incurred in responding to the motion. Dkt. 83. NCS filed a reply (Dkt. 84) and after filing a notice of intent (Dkt. 85), Mr. Bell filed a surreply (Dkt. 86).

1 For the reasons stated herein, the undersigned recommends NCS's Rule 11 motion be
2 denied and that Plaintiff be awarded his attorney fees and costs incurred in defending this
3 motion.

4 PROCEDURAL BACKGROUND

5 NCS did not bring its motion for sanctions in a separate motion as required by Rule
6 11(c)(2), but instead requests that Mr. Bell's entire case be dismissed. NCS's motion is a badly
7 disguised motion to dismiss based on Mr. Bell's failure to state a claim under the FCRA, which
8 is only one of the three claims asserted in the Second Amended Complaint. Dkt. 59. In addition,
9 NCS attached over 180 pages of exhibits to its motion and an additional 106 pages to its reply.
10 Dkt. 82, Exhibits A through M; Dkt. 84, Exhibits 1 through 7. None of the exhibits are
11 authenticated and most are not contemplated by the Second Amended Complaint.

12 In response, Mr. Bell treated the motion as a motion to dismiss with an adjunct claim for
13 attorney fees and costs. Dkt. 83. In reply, NCS reiterates that it seeks dismissal of Mr. Bell's
14 entire case as a Rule 11 sanction. Dkt. 84.

15 The Court declines to turn NCS's Rule 11 motion into a motion to dismiss or for
16 summary judgment. The only issue here is whether Mr. Bell's FCRA claim is legally or factually
17 baseless from an objective perspective and whether his attorney conducted a reasonable and
18 competent inquiry before signing and filing it. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th
19 Cir. 2002) (quotation marks and citation omitted). If the Court determines that Rule 11 has been
20 violated, the Court "may" impose sanctions. *See Warren v. Guelker*, 29 F.3d 1386, 1390 (9th
21 Cir.1994). The imposition of sanctions is "not a judgment on the merits of an action. Rather, it
22 requires the determination of a collateral issue: whether the attorney has abused the judicial
23 process, and, if so, what sanction would be appropriate." *Cooter & Gell*, 496 U.S. at 396.

1 Moreover, sanctions imposed under Rule 11 must “be compensatory rather than punitive in
 2 nature.” *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017).

3 If NCS seeks dismissal on the merits of Mr. Bell’s claims, it should bring a properly
 4 supported dispositive motion after the close of discovery and within the deadline set by the
 5 Court. Even if the Court were to consider the unauthenticated documents presented by NCS, to
 6 which Mr. Bell has objected, NCS fails to establish that Mr. Bell’s allegations are factually
 7 baseless or were presented for an improper purpose. Instead, the disputes raised by NCS may,
 8 and should, be resolved in the ordinary course of litigation. *See* Fed. R. Civ. P. 11, Advisory
 9 Committee Notes, 1993 Amendment (explaining that Rule 11 motions should not be used “to
 10 intimidate an adversary into withdrawing contentions that are fairly debatable); *Golden Eagle*
 11 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986), *superseded by statute*
 12 *on other grounds* (“If, judged by an objective standard, a reasonable basis for the position exists
 13 in both law and in fact at the time the position is adopted, then sanctions should not be
 14 imposed.”).

15 As explained herein, NCS has failed to demonstrate that Mr. Bell’s allegations violate
 16 Rule 11 or that the dispositive and draconian sanctions it seeks are appropriate.

17 **FACTS RELEVANT TO FCRA CLAIM**

18 The relevant facts supporting Mr. Bell’s FCRA claim are contained in his Second
 19 Amended Complaint. Dkt. 59. On September 30, 2014, Copper Ridge Apartments (“Copper
 20 Ridge”) obtained an eviction judgment against Mr. Bell for unpaid rent, interest, attorney fees,
 21 and costs. With additional rent due and owing, utilities, an early termination fee, and damage to
 22 the property, Copper Ridge calculated that Plaintiff owed it \$6,893.56. Dkt. 59, ¶¶29-30; Dkt.
 23 82, p. 3.

1 About three years later, when reviewing his three bureau credit report, Mr. Bell
2 discovered that Equifax was reporting four separate accounts from the furnisher “Copper Ridge
3 Apts,” each in the amount of \$5,393.00, effectively reporting a total of \$21,572.00 owed to
4 “Copper Ridge Apts”; Experian was reporting six separate accounts from the furnisher “National
5 Credit Systems” (Defendant NCS), with three in the amount of \$5,393.00, and three in the
6 amount of \$1,500.00, effectively reporting a total of \$20,679.00 owed to “National Credit
7 Systems”; and Trans Union was reporting six separate accounts, three in the amount of
8 \$5,393.00 from the furnisher “Copper Ridge Apts”, and three in the amount of \$1500.00 from
9 the furnisher “Sure Deposit.” Altogether, Trans Union was reporting a total owed of \$20,679.00;
10 \$16,179.00 to “Copper Ridge Apts” and \$4,500.00 to “Sure Deposit.” Dkt. 59, ¶ 32.

11 On May 14, 2019, NCR sent Mr. Bell an email with a breakdown of the amounts, which
12 showed that Mr. Bell owed a total of \$6,893.56 to Copper Ridge only. *Id.*, ¶ 34. NCS made no
13 reference to the “Sure Deposit” entity listed in Trans Union report. *Id.*, ¶ 35. In addition, the
14 account number listed by NCS (3057738) was a completely different account number than was
15 listed on each of the multiple reporting of debts by NCS to Mr. Bell’s credit reports (307****)
16 and the amount of \$6,893.56 never appeared on his credit reports, leading him to believe there
17 may be another debt out there on top of the multiple reporting of debts. Dkt. 83, Declaration of
18 Dawn McCraw, ¶ 5.

19 Mr. Bell mailed letters to Equifax, Experian, and Trans Union disputing the erroneous
20 and duplicative reporting of the \$6,893.56 eviction debt as multiple accounts. Dkt. 59, ¶¶37-38.
21 The CRAs forwarded Mr. Bell’s disputes to NCS. *Id.* at ¶ 39. On September 26, 2019, after
22 NCS’s investigation, reporting errors by NCS still remained. Dkt. 59, ¶¶ 43-47. At that time,
23 Experian had changed its reporting of the debt to reflect four separate accounts from the

1 furnisher “National Credit Systems,” two in the amount of \$5,393.00 and two in the amount of
 2 \$1,500.00, effectively reporting a total of \$13,786.00 owed to “National Credit Systems.” *Id.*, ¶
 3 45. Equifax was reporting the debts as two debts of \$5,393.00 owed to Copper Ridge, and Trans
 4 Union reported \$1,500 owed to Sure Deposit and \$5,393.00 owed to Copper Ridge. *Id.*

5 Mr. Bell claims statutory harm under the FCRA caused by NCS’s duplicitous reporting
 6 and FDCPA and WCPA claims (which are not addressed in NCS’s Rule 11 motion) for
 7 misrepresenting the amount of debt he owes, failing to report any account as disputed, and for
 8 reporting the single debt as multiple debts. *Id.*, ¶¶ 54, 81-90.

9 STANDARD OF REVIEW

10 An attorney who signs and files a pleading “certifies that to the best of the person's
 11 knowledge, information, and belief, formed after an inquiry reasonable under the
 12 circumstances,” that the matter “is not being presented for any improper purpose” and that “the
 13 claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous
 14 argument for extending, modifying, or reversing existing law.” Fed. R. Civ. P. 11(b)(1), 11(b)(2).
 15 Rule 11(b)(3) requires that “the factual contentions have evidentiary support, or if specifically so
 16 identified, will likely have evidentiary support after a reasonable opportunity for further
 17 investigation or discovery.”

18 To enforce this section, Rule 11(c) provides that “[i]f, after notice and a reasonable
 19 opportunity to respond, the court determines that Rule 11(b) has been violated, the court may
 20 impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is
 21 responsible for the violation.” Fed. R. Civ. P. 11(c)(1). “The central purpose of Rule 11 is to
 22 deter baseless filings.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo,*
 23 Inc., 971 F.2d 244, 254 (9th Cir. 1992) (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384

1 (1990)). A party moving for sanctions must do so separately from any other motion and may not
 2 present a motion for sanctions to the court until 21 days after service of the motion on the
 3 opposing party. Fed. R. Civ. P. 11(c)(2).

4 The imposition of Rule 11 sanctions is “not a judgment on the merits of an action. Rather,
 5 it requires the determination of a collateral issue: whether the attorney has abused the judicial
 6 process, and, if so, what sanction would be appropriate.” *Cooter & Gell*, 496 U.S. at 396.
 7 Moreover, sanctions imposed under Rule 11 must “be compensatory rather than punitive in
 8 nature.” *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017). “If warranted,
 9 the court may award to the prevailing party [of a Rule 11 motion] the reasonable expenses,
 10 including attorney's fees, incurred for the motion.” Fed. R. Civ. P. 11(c)(2).

11 DISCUSSION

12 At issue here is Mr. Bell's claim that NCS violated the FCRA, as alleged in his Second
 13 Amended Complaint. Dkt. 59. Thus, the Court must determine whether the claim was legally or
 14 factually basis, from an objective perspective, at the time the attorney signed the complaint. The
 15 Court must also determine if the attorney conducted a reasonable and competent inquiry before
 16 signing and filing it. *Christian*, 286 F.3d at 1127 (“[w]here as here, the complaint is the primary
 17 focus of Rule 11 proceedings, a district court must conduct [the] two-prong inquiry) (citing
 18 *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir. 1997)). To place the FCRA claim in context, the
 19 Court turns first to the elements of a FRCA claim.

20 “A primary purpose for the FCRA [is] to protect consumers against inaccurate and
 21 incomplete credit reporting.” *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1155–56
 22 (9th Cir. 2009) (internal citations omitted); *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d
 23 1057, 1060 (9th Cir. 2002). To state a claim under §1681s-2(b) of the FCRA, a plaintiff must

1 plausibly allege that “(1) he found an inaccuracy in his credit report; (2) he notified a credit
 2 reporting agency; (3) the credit reporting agency notified the furnisher of the information about
 3 the dispute; and (4) the furnisher failed to investigate the inaccuracies or otherwise failed to
 4 comply with the requirements of 15 U.S.C. § 1681s-2(b)(1)(A)-(E).” *Biggs v. Experian Info.*
 5 *Sols., Inc.*, 209 F. Supp. 3d 1142, 1144 (N.D. Cal. 2016); *See also Gorman*, 584 F.3d at 1153-54
 6 (9th Cir. 2009).

7 1. Finding Inaccuracy in Credit Report

8 Mr. Bell alleges that on or about May 9, 2019, he discovered the following inaccurate
 9 reporting of his debt to Copper Ridge:

10 (a) Equifax, through Privacy Guard,¹ was reporting four separate accounts from the
 11 furnisher “Copper Ridge Apts,” each in the amount of \$5,393.00, effectively reporting a total of
 12 \$21,572.00 owed to “Copper Ridge Apts.” Dkt. 59, ¶ 32.

13 (b) Experian, through Privacy Guard, was reporting six separate accounts from the
 14 furnisher “National Credit Systems,” with three in the amount of \$5,393.00, and three in the
 15 amount of \$1,500.00, effectively reporting a total of \$20,679.00 owed to “National Credit
 16 Systems.” *Id.*

17 (c) Trans Union, through Privacy Guard, was reporting six separate accounts, three
 18 (3) in the amount of \$5,393.00 from the furnisher “Copper Ridge Apts”, and three (3) in the
 19 amount of \$1500.00 from the furnisher “Sure Deposit.” Altogether, Trans Union was reporting a
 20
 21

22 23 ¹ Privacy Guard is a credit information compiler and monthly credit monitoring service that
 obtains a consumer’s credit reports directly from the “big three” National Credit Reporting
 Agencies (“CRAs”) (*i.e.*, Equifax, Experian, and Trans Union) and presents them “side-by-side”
 for a consumer’s review.

1 total owed of \$20,679.00; \$16,179.00 to “Copper Ridge Apts” and \$4,500.00 to “Sure Deposit.”

2 *Id.*

3 Thus, Mr. Bell alleges that NCS both reported false information (a \$6,893.56 debt being
 4 reported as totaling above \$20,000.00) and reported it in a materially misleading manner
 5 (separating the one [or possibly two] account(s) into four and/or six tradelines, indicating to a
 6 potential creditor that Mr. Bell was seriously delinquent on six separate monetary agreements,
 7 when he was only delinquent on one [or possibly two]).

8 The parties disagree as to whether Mr. Bell owed one debt (to Copper Ridge) or two
 9 debts (to Copper Ridge and Sure Deposit). Mr. Bell continues to assert that the entire debt owed
 10 to NCS was part of a single debt and should have resulted in only one tradeline on his credit
 11 report. However, even accepting that the debts are ultimately owed to separate entities (Copper
 12 Ridge and Sure Deposit/Assurant), Mr. Bell alleged that Equifax was reporting four separate
 13 accounts and both Experian and Trans Union were reporting six separate accounts when at most,
 14 there should have been only one (or two if the debts were owed to separate entities).

15 2. Mr. Bell Notified the CRAs

16 On or about May 29, 2019, pursuant to 15 U.S.C. § 1681i, Mr. Bell mailed certified
 17 letters to Equifax, Experian, and Trans Union, disputing the erroneous and duplicative reporting
 18 of a \$6,893.56 debt as multiple accounts totaling amounts in excess of \$20,000.00. Dkt. 59, ¶¶
 19 37-38.

20 3. The CRAs Forwarded Mr. Bell’s Dispute to NCS

21 Mr. Bell alleges that the CRAs forwarded Mr. Bell’s dispute to NCS. Dkt. 59, ¶ 39. NCS
 22 admits receipt of Mr. Bell’s dispute. Dkt. 82, p. 5.

1 4. NCS Failed To Comply With The Requirements Of 15 U.S.C. § 1681s–
 2 2(b)(1)(A)–(E)

3 NCS, as a furnisher, after receiving a dispute, bears the responsibility of investigating the
 4 validity of the dispute and (1) modifying, (2) deleting, or (3) permanently blocking the reporting
 5 of any item of information found to be “inaccurate or incomplete.” § 1681s-2(b)(1)(E)(i)–(iii).

6 Mr. Bell alleges that after NCS received the dispute, NCS provided him with a letter stating that
 7 Mr. Bell owed a single debt of \$6,893.56 to Copper Ridge. Dkt. 59, ¶ 34. He further alleges that
 8 as of September 26, 2019, after Mr. Bell’s dispute, NCS was still reporting the Copper Ridge
 9 debt to Experian as four separate accounts, two in the amount of \$5,393.00 and two in the
 10 amount of \$1,500.00, effectively reporting a total owed of \$13,786.00. Dkt. 59, ¶¶ 43, 45.

11 NCS states that it investigated Plaintiff’s claim that he only owed one debt, verified that
 12 both debts belonged to Plaintiff, and that the amounts of each debt were correct. According to
 13 NCS, Plaintiff knew or should have known that he owed both Copper Ridge and Sure Deposit
 14 because at the time he signed the apartment lease, Mr. Bell also signed a Tenant Bond with Sure
 15 Deposit. Dkt. 82, p. 3. After Copper Ridge obtained the eviction judgment against Mr. Bell, it
 16 made a claim to Sure Deposit for the \$1,500.00 bond amount. NCS then applied the \$1,500.00
 17 paid by Sure Deposit to the \$6,893.56 balance owed to it by Mr. Bell. Both debts – to Copper
 18 Ridge in the amount of \$5,393.56 (\$6,893.56 minus the \$1,500 paid by Sure Deposit) and to
 19 Sure Deposit in the amount of \$1,500 – were referred to NCS for collection. *Id.*

20 Accordingly, NCS argues that Mr. Bell’s FCRA allegations (Paragraph 52 of the Second
 21 Amended Complaint) are “not warranted by existing law or by a non-frivolous argument for
 22 extending, modifying, or reversing existing law or for establishing new law, and are not
 23 grounded in law or fact.” Dkt. 82, p. 8. NCS points to documents produced in discovery showing
 that there were clearly two amounts owing, and that NCS was collecting one debt for Copper

1 Ridge and one for Sure Deposit. *See, e.g.*, Dkt. 84-1, p. 9. In contrast, Mr. Bell alleged that he
2 owed only one debt and this belief was based on NCS's May 14, 2019 debt validation letter,
3 which clearly indicated that the entire amount due was being claimed on behalf of Copper Ridge
4 only. Mr. Bell continues to assert that the entire debt owed to NCS was part of a single debt and
5 should have resulted in only one tradeline on his credit report. Dkt. 83, p. 16 n.5. This dispute
6 does not show that Mr. Bell brought a frivolous claim. Instead, it merely illustrates that the
7 parties disagree on the facts and applicable law.

8 In addition, there are allegations in the Amended Complaint that even after its
9 investigation, reporting errors by NCS still remained. Dkt. 59, ¶¶ 43-47. Mr. Bell alleges that
10 NCS failed to modify, delete, or permanently block the reporting of "inaccurate or incomplete"
11 information pursuant to its duty under § 1681s-2(b)(1)(E)(i)-(iii) because NCS did nothing to
12 correct the multiple lines of credit and in fact, the CRAs were still reporting four to six lines of
13 credit. *Id.*, ¶ 45 (Experian changed its reporting to four accounts from NCS – two in the amount
14 of \$5,393.00 and two in the amount of \$1,500.00; Equifax was reporting the debts as two debts
15 of \$5,393.00 owed to Copper Ridge; and Trans Union reported \$1,500 owed to Sure Deposit and
16 \$5,393.00 owed to Copper Ridge).

17 The undersigned concludes there was no Rule 11 violation. In addition, there is no
18 evidence that Mr. Bell's counsel failed to conduct a reasonable inquiry. Disagreeing on the facts
19 and applicable law is not grounds for sanctions. Whether Mr. Bell can ultimately prove that NCS
20 failed to comply with its obligations to investigate and correct any inaccurate or complete
21 information is a question more appropriately addressed in a motion for summary judgment after
22
23

1 discovery and after the parties have had an opportunity to fully brief and provide appropriate
 2 summary judgment evidence to the Court.²

3 The Ninth Circuit has discussed, at length, the impropriety of bringing Rule 11 motions
 4 on complaints which sufficiently state a claim, citing Supreme Court “concerns that [Rule 11]
 5 will spawn satellite litigation and chill vigorous advocacy...” *In re Keegan Mgmt. Co., Sec*
 6 *Litig.*, 78 F.3d 431, 435 (9th Cir. 1996) (quoting *Cooter & Gell*, 496 U.S. at 393). “We do little
 7 to undermine the deterrent goals of [Rule 11] by not sanctioning complaints which have merit on
 8 their face. The potential for such sanctions, however, may do much to increase the frequency of
 9 the collateral litigation that is Rule 11’s unfortunate side effect. *In re Keegan Mgmt. Co., Sec.*
 10 *Litig.*, 78 F.3d at 435.

11 NCS bases its Rule 11 motion on “conclusive evidence” *i.e.* the “lease, bond, and final
 12 statement provided by NCS in April 2019,” and argues that Mr. Bell and his counsel had the
 13 same access to information that NCS did. Dkt. 82, p. 8. Thus, it is curious that NCS would wait
 14 almost a year to claim that Mr. Bell’s FCRA claim is frivolous.³ Instead of filing a Rule 11
 15 motion or a motion to dismiss months ago, NCS chose to file answers to Mr. Bell’s complaints
 16 and fully defend and participate in this litigation. Since November 8, 2019 and the filing of the
 17 First Amended Complaint (naming NCS) (Dkt. 7), NCS filed an answer asserting various

18 _____
 19 ² NCR’s resort to LCR 11(c) is likewise unavailing as there is no evidence that Plaintiff or his
 20 counsel failed to comply with the federal rules, the local rules, an order of the court, or otherwise
 21 multiplied or obstructed these proceedings. Additionally, the Court declines to consider new
 22 arguments raised by NCR in its reply (attempts to settle, discovery issues, vague references to a
 23 deposition, and a conclusory and unsupported claim that the Privacy Guard credit report does not
 actually contain information from Trans Union, Equifax, and Experian). *See* Dkt. 84.

³ Although the Second Amended Complaint is at issue, the original complaint and every
 amendment thereafter included the claim that NCS violated the FCRA. *See* Dkt. 1 (Original
 Complaint); Dkt. 7 (Amended Complaint); Dkt. 59 (Second Amended Complaint). *See also* Dkt.
 6 (voluntary dismissal of National Credit Services, Inc.) and Dkt. 7 Amended Complaint
 (naming National Credit Systems, Inc.)

1 affirmative defenses (Dkt. 27); filed an amended answer asserting some but omitting other
2 previously asserted affirmative defenses (such as failure to state a claim) (Dkt. 48); participated
3 in the preparation of a joint status report and discovery plan (Dkt. 51); did not oppose Plaintiff's
4 motion to file the Second Amended Complaint (to include new facts learned in discovery and to
5 add a Fair Debt Collection Practices Act claim) (Dkt. 57); filed an answer to the Second
6 Amended Complaint, asserting *inter alia*, that NCS is entitled to a setoff from Mr. Bell's
7 settlement with Sure Deposit (Dkt. 67); and joined in a stipulated protective order to govern the
8 parties' discovery (Dkt. 70).

9 These actions contradict NCS's claim now that Mr. Bell "continues to advance this
10 lawsuit – where it is patently obvious that there are no grounds for relief." Dkt. 84, p. 1. Rule 11
11 sanctions should be reserved for the "rare and exceptional case where the action is clearly
12 frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose."
13 *Operating Eng'rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1344 (9th Cir. 1988)). This is not
14 such a case.

15 C. Plaintiff's Request for Fees and Costs Under 28 U.S.C §1927

16 Mr. Bell requests an award of reasonable attorney's fees and costs, pursuant to 28 U.S.C
17 §1927, that he incurred in defending against NCS's Rule 11 motion. Mr. Bell argues that NCS
18 has wasted Mr. Bell's time and resources and attacked his character and that of his counsel in a
19 public filing. Mr. Bell further contends that NCS brought its motion in a purposefully confusing,
20 underhanded, and duplicitous manner, *i.e.*, requesting dismissal of the entire complaint when it
21 failed to address two of the three claims asserted, improperly submitting unauthenticated
22 evidence, and for requesting a Rule 11 sanction when Mr. Bell brought a plausible claim. Dkt.
23 83, p. 20.

1 “[Section 1927] permits a federal district court to sanction an attorney personally who
 2 multiplies the proceedings in any case unreasonably and vexatiously.” *Estate of Blas Through*
 3 *Chargualaf v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986) (internal quotation marks omitted); *see*
 4 28 U.S.C. § 1927. “Section 1927 sanctions require a bad faith finding,” *W. Coast Theater Corp.*
 5 *v. City of Portland*, 897 F.2d 1519, 1528 (9th Cir. 1990) (citing *Soules v. Kauaians for Nukolii*
 6 *Campaign Comm.*, 849 F.2d 1176, 1185 (9th Cir. 1988)), and “[a] district court may impose
 7 sanctions under [S]ection 1927 only on a showing of the attorney’s recklessness or bad faith.”
 8 *Estate of Blas*, 792 F.2d at 860 (citation omitted). “Bad faith is present when an attorney
 9 knowingly or recklessly raises a frivolous argument ... or argues a meritorious claim for the
 10 purpose of harassing an opponent.” *Id.* (citations omitted).

11 The Court agrees that NCS has unreasonably multiplied the proceedings in this case by
 12 asking for a dismissal on the merits of Mr. Bell’s complaint through a Rule 11 motion. Counsel
 13 should know that Rule 11 is not the vehicle to obtain a judgment on the merits as it applies only
 14 to the signing of a pleading or motion and when evaluating the pleading, the Court looks
 15 objectively at the attorney’s conduct at the time of signing. *Community Elec. Serv. v. National*
 16 *Elec. Contractors Ass’n, Inc.*, 869 F.2d 1235, 1243 (9th Cir.), *cert. denied*, 493 U.S. 891, 110
 17 S.Ct. 236, 107 L.Ed.2d 187 (1989). Moreover, even when a Rule 11 violation has been shown,
 18 sanctions are not automatic and are to be compensatory rather than punitive in nature.

19 NCS’s decision to use a Rule 11 motion to legally attack the substance of Mr. Bell’s
 20 entire complaint, while personally attacking Plaintiff and his counsel, was ill advised and
 21 reckless. In addition, NCS supported this purported Rule 11 motion with hundreds of
 22 unauthenticated documents and raised novel and unsupported matters in its response. NCS’s
 23 decision to cloak a motion to dismiss on the merits in the guise of a Rule 11 motion, does further

1 violence to the purpose behind the FCRA (“to protect consumers against inaccurate and
2 incomplete credit reporting...” *Gorman*, 584 F.3d at 1155–56), and fully realizes the Supreme
3 Court’s stated concern that Rule 11 motions “spawn satellite litigation and chill vigorous
4 advocacy...”. *Cooter & Gell*, 496 U.S. at 393.

5 For these reasons, the undersigned recommends that Mr. Bell be awarded attorney’s fees
6 and costs incurred in defending against NCS’s motion for sanctions and that his attorney be
7 directed to submit an affidavit in support of her fees and costs for the Court’s consideration.

8 **OBJECTIONS AND APPEAL**

9 This Report and Recommendation is not an appealable order. Therefore, a notice of
10 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
11 assigned District Judge enters a judgment in the case.

12 Objections, however, may be filed and served upon all parties no later than Tuesday,
13 **November 3, 2020**. The Clerk should note the matter for Thursday, **November 5, 2020**, as
14 ready for the District Judge’s consideration if no objection is filed. If objections are filed, any
15 response is due within 14 days after being served with the objections. A party filing an objection
16 must note the matter for the Court’s consideration 14 days from the date the objection is filed
17 and served. The matter will then be ready for the Court’s consideration on the date the response
18 is due. Objections and responses shall not exceed six (6) pages. The failure to timely object may
19 affect the right to appeal.

20 DATED this 14th day of October, 2020.

21
22 
23

BRIAN A. TSUCHIDA
Chief United States Magistrate Judge